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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,017

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EXAMINER

DAVIS, DEBORAH A

ART UNIT

PAPER NUMBER

1655

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DELIVERY MODE

10/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/511,017	Applicant(s) SANTO ET AL.	
	Examiner DEBORAH A. DAVIS	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 4 is/are rejected.
- 7) ☐ Claim(s) 9-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10-8-04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of species in the reply filed on 8-4-08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, the following species will be examined on the merits: A. Tumeric; B. medicinal herb; C. Licorice. Applicant has withdrawn claim 5 which is related to the species D. Japanese Angelica Root. Claims 1, 3-4, and 9-12 are under consideration for examination. Claims 5-7 are withdrawn and claim 8 is cancelled.

Claim Objections

Claims 1, 3-4, and 9-12 are objected to because of the following informalities: Claims 1, 3-4 and 9-12 are somewhat difficult to understand. It is suggested that they be amended as follows: Claim 1, "A lotion for therapy of dermatitis ~~characterized in that it contains~~ comprising". Claims 3, "The lotion for therapy of dermatitis described in claim 1, further comprising an auxiliary agent, ~~characterized in that~~ wherein". Claim 4, "The lotion for therapy of dermatitis described in claim 3 ~~characterized in that~~ wherein". Claim 9, A lotion for therapy of dermatitis ~~characterized in that the~~ comprising". Claim 10 "A lotion for therapy of dermatitis ~~characterized in that the~~ comprising". Claim 11, "A lotion for therapy of dermatitis ~~characterized in that the~~ comprising". Claim 12, "A lotion for therapy of dermatitis ~~characterized in that the~~ comprising". Claim 12, please

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complete the parenthesis to read: "(previously presented)". In claims 1, 3-4 and 9-12, the plant names should be rewritten in lower case letters.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Babish et al (US 2003/0108628).

A lotion for therapy of dermatitis comprising extracts drawn from one, two or more plants selected from the group consisting of the disclosed plants therein.

Applicant has elected the extract of turmeric for examination of claim 1.

The cited reference of Babish anticipates the instant claim 1 by disclosing a lotion that contains curcuminoids (extracts of tumeric) and other ingredients therein for the treatment of acne rosacea (Example 5, e.g.).

Therefore the cited reference is deemed to anticipate the instant claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babish et al in view of Bonte et al (US 5,716,800).

A lotion for therapy of dermatitis comprising extracts drawn from one, two or more plants selected from the group consisting of the disclosed plants therein. Applicant has elected the extract of turmeric, a medicinal herb and Licorice for examination of claims 1-3.

The cited reference of Babish beneficially teaches a lotion that contains curcuminoids (extracts of tumeric) and other ingredients therein for the treatment of acne rosacea (Example 5, e.g.).

The cited reference of Bonte et al beneficially teaches a cosmetic or pharmaceutical composition that contains an extract of licorice, glycyrrhiza glabra (auxiliary extract). The composition can be formulated in particular dermatological gels, creams emulsion or milk for treatment of acne (column1 lines 64-65, column 2, lines 41-46, e.g.). The examiner interprets the auxiliary agent as the licorice plant which is a medicinal herb for treating acne.

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It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit since each is well known in the art for the same purpose (e.g., treating acne) and for the following reasons. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. In re Sussman, 1943 C.D. 518; In re Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); In re Susi, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960). This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

Claims 9-12 are free of the art. The prior art does not teach or suggest a therapeutic lotion comprising a combination of the recited ingredients as defined by instant claims 9-12.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBORAH A. DAVIS whose telephone number is (571)272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Deborah A. Davis
Patent Examiner, AU 1655
October 2008

/Christopher R. Tate/
Primary Examiner, Art Unit 1655